

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(Reno, NV)

MASTERFOODS USA,  
A DIVISION OF MARS, INC.

Employer<sup>1</sup>

and

Case 32-RC-5303

TEAMSTERS UNION LOCAL 533,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Masterfoods, USA, a Division of MARS, Inc., herein called the Employer, is in the business of the wholesale production, storage, and distribution of Masterfoods and Mars products, including Kal Kan pet food. Teamsters Union Local 533, International Brotherhood of Teamsters, AFL-CIO, herein called the Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time food production workers, warehousemen, shipping and receiving employees, and forklift drivers employed by the Employer at its Reno, Nevada facility, excluding all other employees, truck drivers, clerical employees, mechanics, system technicians, production technicians, managers, supervisors, and guards as defined by the Act. A hearing officer of the Board

---

<sup>1</sup> The name of the Employer appears as amended at the hearing.

held a hearing, and the Petitioner and Employer each filed a brief with me, which I have duly considered.

The primary issue here is the scope of the appropriate unit. Petitioner seeks a unit limited to the Employer's production and warehouse employees. The Employer contends that the smallest appropriate unit is one that also includes the Employer's maintenance department employees – the shift mechanics, systems technicians, and control technicians. There is no prior history of collective bargaining at the Reno plant.

I have considered the evidence and the arguments presented by the parties on this issue. For the reasons set forth below I find, in agreement with the Union, that the petitioned for unit of production and warehouse employees is an appropriate unit. Accordingly, I am directing an election in a unit that consists of approximately 62 employees.

To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations. Then I will present in detail the facts, case law, and reasoning that support my conclusions in this matter.

## **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

### **A) Management Hierarchy**

The highest ranking management person at the Reno facility is Eric Ponce De Leon, the Site Director. Below him in authority are Bryan Cole, the Safety Technical Manager; and Wanda Evans, the Operations Manager.<sup>2</sup> Cole is responsible for all of the safety, maintenance, technical, and engineering areas of the plant. Directly under Cole

---

<sup>2</sup> Evans is currently away from the facility on another assignment, so Cole is filling in for her as Operations Manager, in addition to his regular duties as Safety Technical Manager.

comes Cliff Townsend, the Manager of the Maintenance Operations Improvement Group (hereinafter called the Maintenance Department), and Dennis McCormick, who is responsible for the safety and environmental areas. The Operations Manager oversees the production, warehouse, and shipping departments (hereinafter called the Production Department). Directly under the Operations Manager come the three shift managers, Ralph Reiser, Greg Lewis, and David Chadwell.

#### **B) The Production Department**

The Employer's Reno facility is engaged in the production of dry dog and cat food. The first step in the production process is dry receiving, where all of the major commodities and materials utilized in the production process are received by a receiving operator. The receiving operator inspects the incoming materials for quality control, unloads them, and then segregates them into the appropriate storage bins. The batching digest operator then pulls from these bins all of the major and minor ingredients for the products that are being run that shift and runs them through a machine that transforms them into a product called batch meal. The batching digest operator, with some assistance from a process utility technician, also produces digest, which is a coating that is put on the finished kibble. The batch meal and the digest are then sent to the extrusion machine. The extrusion machine is operated by an extrusion operator, who is sometimes assisted by a process utility technician. This machine transforms the batch meal into core kibble. The kibble is then run through a drying process, various coatings are applied to it, and it is then cooled down. At this point, the kibble has been converted into the finished product – dry dog or cat food. The finished kibble is sent to intermediate storage. A

---

packaging operator is responsible for packaging the product and sending it down the line to be palletized. The packaged product then goes to the logistics area, where the logistics operator either stores it in the warehouse or puts it on a truck for direct shipment, as instructed by the shipping technician or the packaging specialist.

The Employer operates on a 24 hour a day, 7 day a week work schedule, with two twelve hour shifts each day. The day shift runs from 6:30 a.m. to 7 p.m. The night shift operates from 6:30 p.m. to 7:00 a.m. The production employees are divided into three teams, which are designated as the white, blue, and green teams. Each team is headed by its own shift manager, whom the parties agree are statutory supervisors. The three teams work 12 hour shifts on a rotational basis. When fully staffed, the production employee complement on each team consists of one receiving operator; one batching/digest operator; three extrusion operators; five packaging operators; four logistics operators; four shipping technicians; one shift logistics technician; and one packaging/logistics specialist. There is also one employee on the green team who is classified as a nuggets utility operator, and one employee on both the green and white teams designated as a process utility operator. In total, there are approximately 62 non-supervisory employees in the production department.

The Employer's production operations are highly integrated and there is a great deal of interaction among the production employees. The Employer actively promotes cross training between employees in the various production classifications and production employees routinely fill in for one another if they possess the necessary skill sets. In fact, the production employees share such a strong community of interest with each other that

there is no dispute that all of the employees in the receiving, production, packaging, and shipping areas belong in any unit found appropriate herein.

### **C) The Maintenance Department**

Maintenance Department Manager Cliff Townsend is the immediate supervisor of a maintenance crew that consists of six shift mechanics; 11 systems technicians; and two control technicians. Townsend has overall responsibility for discipline, annual performance evaluations, and promotions for the entire maintenance crew. Townsend, the systems technicians, and the control technicians generally work the same hours – day shift – and Townsend is responsible for overseeing their day to day work, along with the work of the two systems technicians who are on the day shift rotation. Townsend does not work at night or on the weekends, except for the regularly scheduled weekends when the lines are down and extensive mechanical work is being performed. Therefore, the two shift mechanics who work each night, and the shift mechanics who work on the weekends, are supervised on those shifts by the production shift managers. The record evidence regarding the scope of this supervisory authority is somewhat thin, and reflects only that the shift managers give job assignments to shift mechanics, they provide input into the annual performance evaluations that Townsend prepares, and they have the authority to send a shift mechanic home pending further investigation for a serious violation of the Employer's safety policies.

The shift mechanics' primary job responsibility is the repair and maintenance of the production department equipment. When they start their shift, the shift mechanics receive a report regarding any problems that occurred in the past 12 hours and regarding

which repairs still need to be completed. This report comes directly from the shift mechanics on the outgoing shift, and the matters raised in the report are also addressed in the pass down meetings that are held in the half-hour overlap between the incoming and outgoing shifts. After the shift mechanics complete all of their on the spot repairs, the shift mechanics wait for the next call reporting another breakdown. While they are in this waiting mode, the shift mechanics perform special projects and preventative maintenance.

The systems technicians are essentially specialized mechanics who possess greater skills than the shift mechanics. Each systems technician is assigned to a particular system or line of equipment. They are responsible for upgrades and improvements, as well as doing preventive and predictive maintenance on their system. Furthermore, because they are more familiar with their own system than the shift mechanics, the systems technicians take charge of any spot repairs that need to be preformed on their system during their work shift. Finally, systems technicians are in charge of the repair and maintenance work on their system during the preventative maintenance shutdowns that occur every other weekend.

The two control technicians are essentially computer programmers who are responsible for the electronic controls on all of the production equipment that is programmable or which requires ladder logic. These systems operate through an electronic format called a programmable logic controller, and through a system called Wonderware, which sets up a graphics interface for the machine operator to use to run the machine. The control technicians install this equipment; program it; ensure that it runs

reliably and ties in properly with the Employer's business systems; perform preventative maintenance on the electronic controls; and repair or resolve any programming problems that arise during the running of these machines.

The Maintenance Department has its own shop located in the middle of the production floor, where the tools and heavy machinery used by the maintenance department employees are kept. The shift mechanics make some of their repairs in the maintenance shop, after they have removed the defective parts from the production equipment. However, the shift mechanics also have rolling tool carts, which they can bring right out onto the shop floor to do repairs. The testimony with regard to how much time the shift mechanics spend on the shop floor as opposed to in the maintenance shop was conflicting. Employer witness Cole estimated that the mechanics spend 90% of their time on the shop floor, while Petitioner witnesses Jeffrey Brooks and John Blount estimated they spent only 40-50% of their time on the shop floor.<sup>3</sup>

## **D) Training And Skills**

### **1) Production Employees**

The skill levels and job experience required of employees in the production department are set forth in their written job descriptions. The least skilled of these employees, the logistics operators and direct ship operators, are essentially forklift drivers. Their job descriptions require them to have two to three years work experience

---

<sup>3</sup> The systems technicians use the same Maintenance Department shop as the shift mechanics. The control technicians have their own office which is located up a flight of stairs from the shop floor, in the Motor Control Center – a room where all of the main electrical breakers are located. Although the Employer contends that the shift technicians and control technicians share a substantial community of interest with the production employees, it failed to present any evidence with regard to the amount of time that either of these classifications spend on the shop floor as opposed to in their respective offices.

operating a forklift, to be computer literate, and to have knowledge of warehouse and sanitation best practices. The highest skilled employees in the production department, the extrusion operators and the packaging/logistics specialists, are required to have 2-3 years previous work experience operating comparable equipment; intermediate math, reading, and writing skills; knowledge of personal computers; and mechanical aptitude.<sup>4</sup>

## **2) Maintenance Employees**

The least skilled employees in the maintenance department are the shift mechanics. According to their job description, they are required, among other things, to have 3-5 years work or military experience in a maintenance related field; documented skill development through class work in maintenance or engineering related fields; thorough knowledge of electricity and electronics with understanding of National Electric Code and good electrical installation practices; knowledge of programmable controlled hardware and ladder logic; and theoretical knowledge of and ability to troubleshoot low and high voltage circuits and related equipment. It is undisputed that none of the Production Department employees are required to have these skills.

The systems technicians are even more highly skilled than the shift mechanics. In addition to possessing all of the same required qualifications as the shift mechanics, the systems technicians' job description states that they must understand digital logic, ASCII, number systems, and basic software structures; possess troubleshooting skills in hydraulics, pneumatics, low and high level voltage, power and logic circuits; have repair

---

<sup>4</sup> To assist the employees in avoiding damage to their machines, the Employer has presented some training moduals explaining the operation of the machines. Some production employees also do some minimal amounts of arguably preventative maintenance work, such as cleaning off their machines and the screens in their machines, checking the levels of the coating fluids and adding grease to the cutting blades.



skills in electrical, mechanical and related equipment with technical proficiency in welding, machining, sheet and structural metal fabrication, and pipe fitting; have the ability to engineer small projects in all fields of maintenance; possess basic personal computer skills; and have the ability to design and fabricate, using materials such as sheet and structural metals.

The control technicians are the most highly skilled employees in the maintenance department. In addition to possessing the same qualifications as the systems technicians, the control technicians must also have experience and knowledge of Allen-Bradley's programmable controller hardware and software; possess advanced personal computer skills; and they must pass an initial three month probationary period.

**E) The Degree Of Interaction Between  
The Maintenance And Production Employees**

**1) Temporary Transfers**

It is undisputed that production employees never substitute for maintenance employees on a temporary basis, even on occasions when the Employer is short a shift mechanic due to factors like illness or vacation. The reason for this is that the Production Department employees lack the requisite skills to perform Maintenance Department work. However, there was conflicting evidence regarding temporary interchange in the other direction – i.e., regarding whether maintenance employees ever temporarily substitute for absent production employees. The Union called two witnesses – extruder operator Jeffrey Brooks, who has worked for the Employer ever since the plant first opened in 1996, and shipping technician John Blount, who has worked for the Employer for two and a half years. Each of them testified that they had never seen a

Maintenance Department employee substitute temporarily for a production employee who was absent. On the other hand, Employer witness Cole testified that shift mechanics Fred Mayorga, Cole Harvey, and Tim Ferrell,<sup>5</sup> each of whom had previously been a production operator, had worked as operators on occasions when the Employer was short handed.<sup>6</sup> While Cole did not state how often these types of temporary substitutions occurred, Employer witness Paige Conner, the Personnel Manager, testified that he would “guess” that shift mechanics substitute for absent production employees a half dozen times each month. It is not clear what Connor’s basis is for this “guess,” what period of time he was describing or whether each of these temporary substitutions lasted all or even most of the shift. Moreover, even if this admitted “guess” is reasonably accurate, because the 62 production employees collectively work a total of about 1000 12 hour shifts a month, the temporary substitutions occur in, at most, only about six tenths of one percent of the total production shifts.

## **2) Permanent Transfers**

There has never been an occasion when a maintenance employee permanently transferred into a production position, since this would be considered a demotion, and could result in a cut in pay. On the other hand, there have been some permanent transfers of production operators into shift mechanic positions. In fact, four of the six current shift mechanics had previously worked as production operators. However, as shift mechanics

---

<sup>5</sup> The record shows that Ferrell is still officially in the apprentice program, and that he was conditionally placed in the shift mechanic position on September 12, 2004. Thus, his work as an occasional temporary substitute in the production department is not as significant with regard to establishing temporary transfers between the maintenance and production departments.

<sup>6</sup> There is also evidence that supervisors occasionally substitute for missing production employees.

possess specialized training and skills in repair work that production employees do not have, even the most skilled operators in the production department – the extruder operators and the packaging/logistics specialists - are not qualified to fill shift mechanic positions without undergoing extensive additional training.<sup>7</sup> To assist operators to obtain these additional skills, the Employer has had to establish its own apprenticeship program. This program consists of a combination of on-the-job training and college classroom courses. A maximum of two operators can be in this program at any given time.<sup>8</sup> The Employer also encourages production operators to work voluntary overtime to assist the shift technicians during preventative maintenance shutdowns, in part so that the operators can receive additional training.

### **3) Daily Interaction**

There is only a minimal amount of interaction between Maintenance Department employees and half of the employees in the Production Department - the 27 or so employees who work in shipping, logistics, and receiving. The reason for this is that the equipment in these areas is either repaired by outside maintenance firms or is of a kind that requires little maintenance. For example, the Employer has a contract with an outside company to do maintenance and repairs on the forklifts, and the bulk of the equipment in shipping and receiving consists of rail cars, trucks, and big tractors that the

---

<sup>7</sup> Systems technicians and control technicians are even more highly skilled than the shift mechanics. No production employee has ever been promoted directly into one of these two technician classifications. Instead, these employees are either hired off the street, or the Employer promotes the most experienced and skilled shift mechanics. Apparently, two of the systems technician had previously worked as shift mechanics.

<sup>8</sup> Employer witness Cole testified that he did not know how long the apprenticeship program lasts.

Maintenance Department is also not responsible for maintaining or repairing. The only time that the Maintenance Department would be called upon to repair something in the shipping and receiving areas would be on the infrequent occasions when a door might not open or a dock plate would not go up.

However, there is regular daily contact between some of the Maintenance Department employees and the other half of the Production Employees – the employees who operate the production machinery. On a typical shift, there are almost always some types of breakdowns or minor repairs that are needed on these machines. If the problem occurs on day shift, the operator will contact the systems technician. On all other shifts, they will contact the shift mechanic. When the systems technician or shift mechanic arrives at the broken machine, the operator will assist them in troubleshooting the problem to determine exactly what is wrong and what type of repair is needed. But once the problem is diagnosed, it is the systems technician or shift mechanic who will use their tools to effectuate the repair. The production operator will not assist in the repair work, but will spend their time either waiting or will just keep busy cleaning up the area.<sup>9</sup>

In addition to these day to day repairs, systems technicians and shift mechanics perform the major equipment rebuilds on the production equipment. However, these rebuilds occur infrequently, and the operators role in them is minimal. Thus, each packaging line is rebuilt once every two or three years and each extrusion machine is rebuilt about once every 12-15 months. While operators may be called upon to assist

---

<sup>9</sup> The operators in the production department do not do any repairs on their own machines and, with the exception of the extrusion operators, they do not do any preventative maintenance either. However, the operators are responsible for the day to day running of their own machines and they carry simple tools such as screw drivers and wrenches to make simple adjustments to their machines while they are running.

maintenance employees in these major rebuilds, their assistance is limited to helping lift pieces of the machine that are too heavy for one person to lift by himself. Similarly, while the smaller rebuilds on the hammers, pins, and sifters occur more frequently, these rebuilds are generally performed by the systems technicians during the bi-weekly preventative maintenance shutdowns when the production operators are not scheduled to work.<sup>10</sup>

#### **F) Terms And Conditions Of Employment**

It is undisputed that the production department employees receive the same fringe benefits, health insurance, and pension as the maintenance department employees. Both groups of employees punch the same time clock; use the same lockers rooms and employee cafeteria; attend the same pass down meetings between shifts; and receive the same punctuality and deferred compensation bonuses.

However, there is a significant disparity in the wages received by the production and maintenance employees. All of the Employer's employees are paid according to a pay scale that ranges from the highest level, zone 5, for the Site Director, to the lowest scale, zone 11, which covers the least skilled operators and technicians. Zone 11 ranges from 10.63 to 11.67 an hour. There are 25 Production Department employees in zone 11

---

<sup>10</sup> While production operators are encouraged to work voluntary overtime during preventative maintenance shutdowns, they are not required to do so. Employees from the Production and Maintenance Departments do serve together on Employer-wide committees and special project teams, such as the Wellness and Safety Committees. However, there is no evidence that participation on these committees is a job requirement, as opposed to being voluntary. Moreover, representatives from management and clerical employees also serve on these committees, and there is no contention that these groups must be included in any unit found appropriate herein. I also note that with regard to regular staff meetings, the Employer holds shift based meetings for the production employees and their supervisors and holds a separate meeting for the support and maintenance employees and their respective supervisors.

working as shipping technicians, logistics operators, or process utility operators. Zone 10 ranges from 11.67 to 13.71 an hour. There are 25 Production Department employees in zone 10 employed as shift logistics technicians, packaging operators, receiving operators, nuggets utility operators, and batching/digest operators. Zone 9 ranges from 14.11 to 15.64 an hour. The only Production Department employees in zone 9 are nine extruder operators and three packaging/logistics specialists. In the Maintenance Department, the six shift mechanics are in zone 9, while the 11 systems technicians and the 2 control technicians are in zone 8. Zone 8 ranges from 16.60 to 21.79 an hour. Put in simpler terms, this means that 81% of the production employees are paid in zones lower than even the lowest paid maintenance employee, while 68% of the maintenance employees are paid in zones higher than the highest paid production employee.<sup>11</sup>

## **II) ANALYSIS OF THE COMMUNITY OF INTEREST FACTORS**

Petitioner seeks an election in a unit limited to the Employer's Production Department, excluding all Maintenance Department employees. In such cases, where there is an absence of a more comprehensive bargaining history, the Board has historically found a petitioned for separate production unit appropriate if the production employees have a community of interest separate and distinct from other employees. *American Cyanamid Co.*, 131 NLRB 909 (1961).<sup>12</sup> "The Board's procedure for

---

<sup>11</sup> Production employees and shift mechanics are assigned to either the white, blue, or green teams, and their hours rotate along with their team. They receive a rotation bonus of 50 cents per hour. On the other hand, the system technicians and the control technicians work only on day shift, and they do not receive the rotation bonus.

<sup>12</sup> Most of the cases in this area concern petitions for the initial establishment of a separate maintenance department unit. Since such cases are but the mirror image of the issue in the instant case, the relevant analysis is identical and provides the framework for the conclusions herein.

determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends.” *Boeing Co.*, 337 NLRB 152 (2001). “In determining whether a sufficient community of interest exists, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration.” *TDK Ferrites Corp.*, 342 NLRB No. 81 (September 14, 2004), citing *Yeungling Brewing Co. of Tampa*, 333 NLRB 892 (2001), and *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), *enfd.* 66 F.3d 328 (7<sup>th</sup> Cir. 1995). No single factor has controlling weight and there are no *per se* rules to include or exclude any classifications of employees in any unit. *Airco, Inc.*, 273 NLRB 348 (1984). In an evolving industrial complex, the effect of any one factor, and the weight to be given it in making unit determinations, will vary from industry to industry and from plant to plant. This necessitates an examination on a case-by-case basis of the appropriateness of a separate production unit.

In applying this case law to the facts before me, I conclude that the production employees have a sufficient community of interest separate and distinct from the maintenance department employees such that the petitioned-for unit of production employees is an appropriate unit.<sup>13</sup> In support of this conclusion, I rely on the fact that

---

<sup>13</sup> I recognize that the Employer has an integrated operation; that as many as three of the lower level maintenance employees have occasionally filled-in for absent production employees; and that the two shift mechanics who are working when Townsend is not at the facility are temporarily under the direction of production department supervisors. However, these factors are readily outweighed by the various other community of interest factors discussed in this section.

the production and maintenance employees are organized by the Employer into different departments; for the most part they lack common supervision<sup>14</sup>; the production employees on average make significantly less than the maintenance employees; the skills sets of the two departments are quite different<sup>15</sup>; there is no evidence of either permanent or temporary transfers from the maintenance department into the production department; and there have been, at most, a relatively minimal number of temporary transfers from the maintenance department into the production department.<sup>16</sup>

Under similar circumstances, in *Lawson Mardon*, supra, the Board found a petitioned-for stand alone production unit to be appropriate. The Board relied on the fact that the production and maintenance employees were organized into different

---

<sup>14</sup> While there was testimony that, during the shifts when Townsend is not working, the shift mechanics are “supervised” by the production supervisors, there was little evidence in the record regarding the extent of the shift supervisors’ authority over them. Thus, there was no evidence regarding the nature of the assignments that the shift supervisors can give to the shift mechanics; no evidence that they could override instructions left by the maintenance supervisor; and no evidence that the shift supervisors possess any maintenance skills and/or ability to direct shift mechanics in their work. Moreover, the record reflects that only the maintenance supervisor has authority to hire and discipline the shift mechanics, and he prepares their annual performance evaluations after consulting with the applicable shift managers. Therefore, I find this evidence regarding the shift supervisors to be insufficient to negate a conclusion that the maintenance and production employees lack common supervision. See, *Lawson Mardon, USA, Inc.*, 332 NLRB 1282 (200).

<sup>15</sup> The production employees are not fungible with the maintenance employees, since they lack the requisite skills to do maintenance department work. Instead, before they can acquire these skills they must undergo extensive training through an apprenticeship program that includes college level classes and receive on-the-job experience, primarily through volunteering to work during preventative maintenance shutdowns. Under such circumstances, even though the maintenance department employees’ skills do not rise to the level of traditional craft employees, the Board does not require such a disparity in skill levels as a prerequisite to finding a separate maintenance unit appropriate. See, *Lawson Mardon*, supra.

<sup>16</sup> Although there have been some permanent transfers from the production department into the maintenance department, the lack of temporary interchange is particularly significant, because “the Board has historically accorded permanent transfers less weight than temporary interchange in assessing the community of interest shared by two groups of employees.” *In re MGM Mirage*, 338 NLRB No. 64, slip op. at 7, (Nov. 20, 2002). See also, *Hilton Hotel Corp.*, 287 NLRB 357, 360 (1987) (these are not “the type of periodic temporary transfers or lateral, two-way transfers between departments that may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills”); and *Ore-Ida Foods*, supra at 1021, fn. 4.



departments; they had separate supervision<sup>17</sup>; the daily contact between the employees in the two departments was limited to production employees identifying the machinery malfunctions and the maintenance employees repairing them; and any minor repairs that production employees performed or assistance they gave to maintenance employees was minimal and largely limited to custodial functions<sup>18</sup>. The Board also noted that, while the maintenance employees did not qualify as craft employees, they were expected to possess job related experience and maintenance skills that the production employees lacked.<sup>19</sup> Based upon all of this evidence, the Board held that the community of interest factors were “not so substantial as to mandate the inclusion of maintenance employees in a production unit ... (since) a labor organization need not seek the only or even the most appropriate unit but is required to seek only an appropriate unit.” *Id.* at 1286, citing *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950).

---

<sup>17</sup> Just as in the instant case, the employer argued that there was shared supervision, because the production shift supervisors had some authority over the maintenance employees on evening, night, and weekend shifts when the maintenance supervisor was not at work. However, the Board rejected this argument, noting that the work directions that the shift supervisors gave to the maintenance employees were routine instructions regarding the order that repairs should be performed and there was no evidence that they had ever issued any discipline to the maintenance employees. This is essentially identical to the instant case.

<sup>18</sup> In *Ore-Ida*, supra at 1020, the Board held that this type of overlap or “lending a hand” did not require the inclusion of maintenance employees in a production unit, since this work is unskilled and peripheral to the regular repair work performed by the maintenance employees. See also, *Phillips Products, Co.*, 234 NLRB 323 (1978) (separate unit of maintenance employees appropriate despite evidence that production employees perform minor repair tasks and sometimes lend a hand to maintenance employees because “basically the production employees do not perform skilled maintenance work and the maintenance employees do not engage in production”).

<sup>19</sup> In *Maxim’s de Paris Suite Hotel*, 285 NLRB 377 (1987) and *Omni International Hotel*, 283 NLRB 475 (1987), the Board found unskilled maintenance employees to constitute a separate appropriate unit where they were separately supervised; possessed skills unique to their classifications; earned higher hourly wages; and infrequently transferred into other departments.

Similarly, in *Yeungling Brewing Company*, *supra*, the Board reversed a Regional Director and found a petitioned-for separate maintenance unit to be an appropriate unit. In reaching this conclusion, the Board relied on evidence that the maintenance employees were separately supervised and had a higher skill level; they were paid a higher wage; there was only minimal evidence of temporary interchange; the maintenance duties performed by the production employees were minor and routine; and almost half of the petitioned for maintenance employees had only minimal contact with the production employees. The Board found that although the employer's operations were integrated and half of the maintenance department employees spent most of their time on the production floor where they had a significant degree of interaction with the production employees, these factors were insufficient to negate the appropriateness of a separate maintenance unit. To a large extent, all of these same considerations are present in the instant case as well, and compel a conclusion that the petitioned for unit of Production Department employees is an appropriate unit. On brief, the Employer disputes this conclusion, and contends that the smallest appropriate unit is one that includes the employees in both the Production and Maintenance Departments. In support of its position, the Employer cites two recent cases, *TDK Ferrites*, *supra*, and *Buckhorn, Inc.*, 343 NLRB No. 31 (September 30, 2004), in which the Board reversed Regional Directors who found petitioned-for separate maintenance units to be appropriate. However, I find that both of these cases are readily distinguishable on their facts.

In *TDK Ferrites*, *supra*, the production technicians, who comprised more than half of the maintenance department, spent a significant portion of their workweek operating

production equipment; they relieved production employees when they went on their breaks; and they filled in for production employees who were absent. In fact, in the grinding department, production technicians spent about 35-40% of their workweek performing production work. Similarly, when production technicians were absent or on vacation, they were replaced by senior production operators. Furthermore, 35 out of the 55 petitioned-for maintenance employees were actually organized by the employer into the production department, where they were supervised by production department supervisors. Based on these factors, the Board concluded that the petitioned-for maintenance employees did not constitute a separate and homogeneous group of employees with interests separate and apart from other employees at the plant. In the instant case, by contrast, the production and maintenance employees are organized into different departments with separate supervision, and there is no comparable evidence of substantial temporary interchange.

The Employer also cites *Buckhorn, Inc.*, 343 NLRB No. 31 (September 30, 2004), where the Board found that the smallest appropriate unit was a combined production and maintenance unit. Just as in *TDK Ferrites*, the Board relied on the fact that the employer's operations were highly integrated; there was a significant degree of interaction and cooperation between the employees in the two departments; the employees shared virtually identical terms and conditions of employment; there was some evidence of permanent transfers between the two departments; and significant evidence of shared supervision. However, I find this case distinguishable on the same basis as I distinguished *TDK Ferrites* – that the key to the Board's decision was

substantial evidence that the “maintenance employees regularly perform production work.” Id. at 3. In this regard, the set-up maintenance employees (who comprised half of the department), worked with and performed the same work as the production employees during the mold change process; both maintenance and production employees regularly assisted employees in the shipping/receiving/warehouse area; and employees from both groups “routinely relieve each other during breaks and can fill in for each other on certain steps in the manufacturing process.” Id. The Board also relied on evidence that there were significant numbers of permanent transfers from production to maintenance and vice versa, and that 14 of the 19 maintenance employees were actually supervised by the production supervisor rather than the maintenance supervisor. All of these factors make *Buckhorn* readily distinguishable from the instant case.

In sum, based upon an analysis of all of the relevant factors, I conclude that the smallest appropriate unit herein is a unit of all production employees.

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time food production workers, warehousemen, shipping and receiving employees, and forklift drivers employed by the Employer at its Reno, Nevada facility; excluding all other employees, maintenance employees truck drivers, clerical employees, managers, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by TEAMSTERS UNION LOCAL 533, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit

employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California

94612-521, on or before **December 22, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (432) 567-8911. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-

0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on **December 29, 2004**. The request may not be filed by facsimile.

Dated at Oakland California this 15<sup>th</sup> day of December, 2004.

---

Alan B. Reichard  
Regional Director  
National Labor Relations Board  
Region 32

32-1300

Classification Index Numbers

|          |          |               |               |
|----------|----------|---------------|---------------|
| 420-1218 | 420-4617 | 420-5000      | 440-1760-0500 |
| 420-2900 | 420-4600 | 420-8417      | 440-1760-1000 |
| 420-4000 |          | 440-1720-0133 | 440-1760-1500 |